

110TH CONGRESS
1ST SESSION

H. R. 4789

To provide parity in radio performance rights under title 17, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 2007

Mr. BERMAN (for himself, Mr. ISSA, Mr. CONYERS, Mr. SHADEGG, Ms. HARMAN, and Mrs. BLACKBURN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide parity in radio performance rights under title 17, United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Performance Rights
5 Act”.

6 **SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL**
7 **BROADCASTS.**

8 (a) PERFORMANCE RIGHT APPLICABLE TO RADIO
9 TRANSMISSIONS GENERALLY.—Section 106(6) of title 17,
10 United States Code, is amended to read as follows:

1 “(6) in the case of sound recordings, to perform
 2 the copyrighted work publicly by means of an audio
 3 transmission.”.

4 (b) INCLUSION OF TERRESTRIAL BROADCASTS IN
 5 EXISTING PERFORMANCE RIGHT.—Section 114(d)(1) of
 6 title 17, United States Code, is amended—

7 (1) in the matter preceding subparagraph (A),
 8 by striking “a digital” and inserting “an”; and

9 (2) by striking subparagraph (A).

10 (c) INCLUSION OF TERRESTRIAL BROADCASTS IN
 11 EXISTING STATUTORY LICENSE SYSTEM.—Section
 12 114(j)(6) of title 17, United States Code, is amended by
 13 striking “digital”.

14 **SEC. 3. SPECIAL TREATMENT FOR SMALL, NONCOMMER-**
 15 **CIAL, EDUCATIONAL, AND RELIGIOUS STA-**
 16 **TIONS AND CERTAIN USES.**

17 (a) SMALL, NONCOMMERCIAL, EDUCATIONAL, AND
 18 RELIGIOUS RADIO STATIONS.—

19 (1) IN GENERAL.—Section 114(f)(2) of title 17,
 20 United States Code, is amended by adding at the
 21 end the following:

22 “(D) Notwithstanding the provisions of sub-
 23 paragraphs (A) through (C), each individual terres-
 24 trial broadcast station that has gross revenues in
 25 any calendar year of less than \$1,250,000 may elect

1 to pay for its over-the-air nonsubscription broadcast
2 transmissions a royalty fee of \$5,000 per year, in
3 lieu of the amount such station would otherwise be
4 required to pay under this paragraph. Such royalty
5 fee shall not be taken into account in determining
6 royalty rates in a proceeding under chapter 8, or in
7 any other administrative, judicial, or other Federal
8 Government proceeding.

9 “(E) Notwithstanding the provisions of sub-
10 paragraphs (A) through (C), each individual terres-
11 trial broadcast station that is a public broadcasting
12 entity as defined in section 118(f) may elect to pay
13 for its over-the-air nonsubscription broadcast trans-
14 missions a royalty fee of \$1,000 per year, in lieu of
15 the amount such station would otherwise be required
16 to pay under this paragraph. Such royalty fee shall
17 not be taken into account in determining royalty
18 rates in a proceeding under chapter 8, or in any
19 other administrative, judicial, or other Federal Gov-
20 ernment proceeding.”.

21 (2) PAYMENT DATE.—A payment under sub-
22 paragraph (D) or (E) of section 114(f)(2) of title
23 17, United States Code, as added by paragraph (1),
24 shall not be due until the due date of the first roy-
25 alty payments for nonsubscription broadcast trans-

missions that are determined, after the date of the enactment of this Act, under such section 114(f)(2) by reason of the amendment made by section 2(b)(2) of this Act.

(b) TRANSMISSION OF RELIGIOUS SERVICES; INCIDENTAL USES OF MUSIC.—Section 114(d)(1) of title 17, United States Code, as amended by section 2(b), is further amended by inserting the following before subparagraph (B):

“(A) an eligible nonsubscription transmission of—

“(i) services at a place of worship or other religious assembly; and

“(ii) an incidental use of a musical sound recording;”.

SEC. 4. AVAILABILITY OF PER PROGRAM LICENSE.

Section 114(f)(2)(B) of title 17, United States Code, is amended by inserting after the second sentence the following new sentence: “Such rates and terms shall include a per program license option for terrestrial broadcast stations that make limited feature uses of sound recordings.”

SEC. 5. NO HARMFUL EFFECTS ON SONGWRITERS.

(a) PRESERVATION OF ROYALTIES ON UNDERLYING WORKS.—Section 114(i) of title 17, United States Code, is amended in the second sentence by striking “It is the

1 intent of Congress that royalties” and inserting “Royal-
2 ties”.

3 (b) PUBLIC PERFORMANCE RIGHTS AND ROYAL-
4 TIES.—Nothing in this Act shall adversely affect in any
5 respect the public performance rights of or royalties pay-
6 able to songwriters or copyright owners of musical works.

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